APPEAL NO. 93081

This appeal arises under the Texas Workers' Compensation Act of 1989 (1989 Act), TEX. REV. CIV. STAT. ANN. arts. 8308-1.01 through 11.10 (Vernon Supp. 1993). On December 28, 1992, a contested case hearing was held in (city), Texas, with 9hearing officer) presiding, to determine whether the claimant, (who is the appellant), had disability related to a compensable injury sustained (date of injury), while she was employed by. (employer). Although the carrier sought to include an issue as to whether the (date of injury) injury was compensable at all, the hearing officer declined to do this. The record was held open until January 7, 1993, in order to receive additional medical evidence, which was submitted by the claimant on January 5, 1993.

The hearing officer determined that the claimant failed to prove a causal connection between "her current disability" and her injury of (date of injury), and ordered that the carrier was not responsible for payment of temporary income benefits unless the claimant was able to re-establish that she had disability. As part of his determination, the hearing officer found that the claimant failed to establish, at the hearing, what chemical substances she was exposed to on (date of injury), and how they would have caused her current dermatitis condition.

The claimant has appealed and disagrees that she failed to prove she was exposed to toxic chemicals at work that have caused her skin condition. She points out the medical evidence that she feels proved her case. She argues that her condition is not an ordinary disease of life but is related to work, and argues that her medical evidence proves this. The carrier responds that the preponderance of medical evidence indicates that the condition results from non-job related causes, and that there is no credible medical evidence connecting her dermatitis to the work place.

DECISION

We affirm the hearing officer's decision.

I.

The claimant had worked for the employer a number of years. The employer manufactured parts for diesel trucks. The claimant's specific job, on (date of injury), was to assemble a part that was used to keep moisture out of the brake systems of 18-wheel trucks. The claimant said that this assembly was done without gloves, and that various greases and oils came into contact with her hands. The claimant said that the primary substance that she touched was "grease."

She stated that when she was injured, she broke out in a rash, and was off from work until December 1991. She returned to the plant and worked until July 1992. At that time, she left work and did not return. She stated that her skin condition has continued to break out all over her body, and, during the hearing, noted a spot of rash that was at that time on her face. The claimant did not contend, at the benefit review conference (BRC) or the

hearing, that any date of injury other than (date of injury), was the cause of her condition.

The record contains a bare minimum of evidence concerning the job she performed when she returned to the plant in December 1991. During one part in the testimony, the claimant answered "yes" in response to a question as to whether she returned to her "normal" job and was able to do it for six or seven months. Other than that, her specific activities from December 1991 through July 1992 were not described. The claimant testified generally that she continued to get "sick" during this return to work, although she acknowledged that her condition that developed in October 1991 had gotten better when she returned in December 1991.

When asked by the hearing officer what was different in July 1992 from the previous months, the claimant answered the question with reference to how she felt, rather than what, if anything, was different about the work place. The claimant acknowledged that she had skin problems in 1985, which cleared up when the employer moved her. She stated that between that time and the October 1991 outbreak, she did not have such conditions.

The claimant's primary doctor that she consulted about her October condition, and also her July outbreak, was a dermatologist, (Dr. B). She disagreed with Dr. B's opinion because he did not run tests on her. The claimant said that after the October 1991 outbreak, she was referred to Southwestern Medical Center in Dallas, where her doctor was (Dr. C). She said that tests were performed on her there and that this proved her reaction to various chemicals. The claimant noted that it was determined she reacted to "WD-40," but she said that she did not use WD-40, and did not use it at work unless it was mixed in with the chemicals. The claimant explained that Dr. C told her that she would continue to break out until the chemicals were gone from her system, and she said that she currently was "airing out."

The hearing officer asked the claimant several times to tell him the chemicals that she felt caused her condition. She brought with her to the hearing some bottles of chemicals, and, when asked to read from those, identified them in terms of "grease" or "oil." She then stated that she believed that silicone, Fel Cobono 607 clear, and loctite were in the materials she handled. She said that Dr. C did not test her for Fel Cobono. Aside from this, there is nothing in the record identifying the specific chemicals to which claimant may have been exposed, or what, if any, reactions such chemicals might cause.

(Mr. K), the safety director for the employer, stated that, to his knowledge, the claimant would not have come into contact with WD-40 on the job, either directly or as part of other chemicals. He did not know what was used to lubricate the machines she worked around. Mr. K stated that after claimant's October 1991 outbreak, a list of all chemicals to which she was exposed was supplied to Dr. B, and then to Dr. C, along with material data safety sheets on all chemicals. Mr. K said that none of those people were able to tell him

that she was allergic to any of these chemicals. He said that he asked Dr. C for a letter dated November 12, 1991 about claimant's condition so that he would have some idea of "where to place her."

Dr. B's notes indicated that he has treated the claimant off and on throughout the years from 1985 through 1992 for a skin condition. In 1985, he characterized the condition as "excoriated neurodermatitis," prescribed oil and ointments, antibiotics for secondary infections, and indicated at that time that a psychiatric consultation could be in order if the problem persisted. His records indicated that she consulted him periodically after 1985 about complaints of breaking out, but Dr. B characterized the condition he saw as "excoriation" rather than "rash." For 1992, his records showed that he saw her in May and treated her for skin infection. On July 14, 1992, Dr. B's notes indicated that he referred her to (Dr. H).

A deposition on written questions and letters from Dr. H, a board-certified psychiatrist, indicated that he believed her skin condition not to be related to work, and that he believed her complaints to be a manifestation of atypical obsessive-compulsive disorder. Dr. H did not perform tests. He indicated that claimant was not fully compliant with his attempts to treat her condition.

Records from Southwestern Medical indicated that the claimant had a patch test on November 5, 1991, which included "1028 oil," "WD-40," and "Phillips 66 grease philube." The results are reported in a November 8, 1991 record signed by Dr. C, in which he stated "patch test showed no evidence of allergic contact dermatitis but did have an irritant reaction to WD-40." He advised that claimant may return to work but should avoid being exposed to the chemical that she was exposed to in the past. Dr. C wrote to Mr. K on November 12, 1991 and said "our testing did reveal that she [claimant] was very sensitive to a number of chemicals which may be causing the problem somewhat and it was recommended that she be excluded from exposure to these chemicals as much as possible." The letter noted that she was specifically irritated by WD-40, and recommended that it may be best to put her in a desk job rather than being around machines and cutting oils. Dr. B gave the claimant a release back to work on December 2, 1991.

The letter from Dr. C submitted by the claimant after the hearing, and included in the record, is dated December 28, 1992. It stated that Southwestern Medical's evaluation determined that many of the chemicals to which claimant was exposed "are irritants" and that "this could have been the original inciting element that led to her problem." However, Dr. C goes on to say that patch testing "failed to reveal any evidence of allergic contact dermatitis although she was noted to have developed strong irritation from application of WD-40." Dr. C agreed that a large component of her condition relates to anxiety, and that a large number of lesions observed were induced by scratching and rubbing. He summarized his letter noting that claimant has chronic dermatitis that "could have been

precipitated" by her exposure to irritants.

After the BRC, where it was agreed that claimant would be examined by another doctor, claimant saw (Dr. K). Dr. K noted on November 23, 1992, that he observed scars on her shoulders and back, and excoriations on the legs. He noted that he did not have the results of her tests, and that if the patch testing confirmed an allergic reaction to a substance at work, he would consider a diagnosis of "chronic contact allergy." However, Dr. K noted that the persistence of the rash beyond six months away from the work place "would argue against this as a diagnosis."

II.

PROCEDURAL HISTORY OF CASE

The claimant was represented by an attorney at the BRC. He withdrew a week prior to the hearing. The issue reported from the BRC was "[i]s there a causal connection between the claimant's current disability and her injury of (date of injury)?" The carrier's position in the report of the BRC was not that the October 7th injury was outside the course and scope of employment, but that claimant's lack of employment beginning July 13, 1992 was due to a "new condition, not job related," and that there was no medical evidence stating that claimant could not work. The report indicated (and the carrier's attorney at the hearing admitted) that temporary income benefits were paid to the claimant when she was out of work during October through December 1991.

The hearing officer considered the BRC issue only and specifically declined to add the additional issue, proposed by the carrier, that the (date of injury) injury was not compensable for purposes of income and medical benefits already paid. Therefore, his findings of fact and conclusions of law apply only to whether the claimant's physical condition and unemployment beginning July 1992 were related to any exposure to chemicals on (date of injury). No other date of injury was claimed.

III.

DID CLAIMANT HAVE, AFTER JULY 1992, THE INABILITY TO OBTAIN AND RETAIN EMPLOYMENT EQUIVALENT TO HER PRE-INJURY WAGE DUE TO AN (DATE OF INJURY), INJURY?

The claimant did not, as the hearing officer indicated in one finding of fact, have the burden to prove that her condition was not an ordinary disease of life or not caused by factors outside of work. However, this finding of fact is not reversible error because the hearing officer also determined that the claimant did not prove, by a preponderance of the evidence, a causal connection between her (date of injury) injury and her unemployment

which started July 1992.

Once the claimant presented evidence that she had a physical condition that she claimed prevented her from working, she had to connect it to her work-related injury, by a preponderance of the evidence. We agree with the hearing officer that she did not do this. First of all, nothing was presented to identify the chemicals that claimant would have contacted, in October 1991, that would cause the delayed outbreak in July the next year, or that would cause it to continue after the claimant left her job.

Second, the effects of chemical exposure that claimant said caused her July 1992 illness under the particular facts in this case required expert medical opinion to prove the connection, because the illness, under these circumstances, is not an area of common experience that the hearing officer would know. *See* Houston General Insurance Co. v. Pegues, 514 S.W.2d 492 (Tex. Civ. App.- Texarkana 1974, writ ref'd n.r.e.); Hernandez v. Texas Employers' Insurance Association, 783 S.W.2d 250 (Tex. App.- Corpus Christi 1989, no writ). Causal connection of an injury to work must be based on "reasonable probabilities." Insurance Company of North America v. Myers, 411 S.W.2d 710 (Tex. 1967). When medical evidence is offered, it must prove that there was a "reasonable probability," not just a possibility, that the condition was caused by something related to work. Schaefer v. Texas Employers' Insurance Ass'n, 612 S.W.2d 199, 202 (Tex. 1980).

The medical evidence presented includes different opinions. However, even the medical evidence most in favor of claimant, from Dr. C, indicated that contact allergies to most substances were ruled out and that Dr. C felt only that any chemical exposure "could have" caused the claimant's skin condition. Dr. C agreed with Dr. B and Dr. H that claimant's symptoms are in large part caused by anxiety-related scratching. The hearing officer's job was to resolve and weigh any conflicting testimony. Article 8308-6.34 (e). In considering all of the doctor's opinions in this case, the hearing officer apparently believed that Dr. C's opinion that claimant's exposure to an irritant could have been a factor in her scratching and skin problems was an educated guess that nevertheless did not prove a reasonably probable connection.

We note that the claimant filed a late supplement to her appeal that submits two letters from Dr. C, dated after the decision was issued. We can only consider evidence that was brought out at the hearing. Article 8308-6.42 (a). However, we have reviewed the letters and note that they repeat much of the evidence developed in the hearing, including the claimant's point that she wasn't tested for everything at work. The information in the letters would not, in our opinion, require a different result given the evidence already in the record of this case.

The decision of the hearing officer is affirmed, for the reasons stated in this opinion.

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Susan M. Kelley
Appeals Judge

CONCUR:

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Stark O. Sanders, Jr.
Chief Appeals Judge

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Robert W. Potts
Appeals Judge